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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WALSH SECURITIES, INC.,	:	Case No. 2:97-cv-03496-DRD-MAS
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
CRISTO PROPERTY MANAGEMENT,	:	Newark, New Jersey
LTD., et al.,	:	Wednesday, July 21, 2010
	:	11:37 a.m.
Defendants.	:	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE MICHAEL A. SHIPP
UNITED STATES MAGISTRATE JUDGE

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I N D E X

(NOTE: Counsel were on telephone and some had static or interruptions in their connection, thereby resulting in indiscernible portions of their comments.)

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1 (Hearing commenced at 11:37 a.m.)

2 THE COURT: Good morning, counsel.

3 THE ATTORNEYS: (In unison) Good morning, Your Honor.

4 THE COURT: This is the matter of Walsh Securities
5 versus Cristo Property Management, Docket Number 97-3496.

6 Who is on the line for the plaintiff?

7 MR. MAGNANINI: Your Honor, we have Bob Magnanini,
8 Amy Wagner and Daniel Mee from Stone and Magnanini for the
9 plaintiffs.

10 THE COURT: Okay. Good morning. And --

11 MR. MAGNANINI: Good morning.

12 THE COURT: And the defendants, just please enter
13 your appearances in no particular order?

14 MR. KOTT: Dave Kott, K-O-T-T, McCarter and English,
15 for the Defendant Commonwealth Land Title Insurance Company.

16 MR. HAYES: Edward Hayes for Defendants Fidelity
17 National Title and Nations Title Insurance Company.

18 MR. MCGOWAN: Martin McGowan, Methfessel and Werbel,
19 for the Defendant Coastal Title Agency.

20 MR. CALANNI: Richard --

21 MR. MANNING: I'm sorry, go ahead.

22 MR. CALANNI: Richard Calanni, pro se.

23 MR. MANNING: Vincent Manning, Manning, Caliendo and
24 Thomson, for Robert Skowrenski and National Home Funding.

25 THE COURT: Is there anyone else on the line this

1 morning who has not entered an appearance?

2 UNIDENTIFIED MALE: No, Your Honor.

3 THE COURT: Okay. Well, folks, we are on the record
4 in this matter, because there are a number of issues that have
5 been put before the Court that require precise action, so I
6 thought that this is a conference that needed to be done more
7 formally than some of our previous conferences.

8 I have a few issues that I want to go through and
9 then, after we're all done, we'll kind of go around the room
10 and see what's left; and, if there are other issues that the
11 Court has not raised, feel free to raise them at that time.

12 There are a number of issues that are procedural in
13 nature that somewhat deal with our schedule. So, I'm going to
14 start off with, before getting into any of the disputes,
15 talking a little bit about the depositions.

16 Apparently, there are depositions that are scheduled
17 through mid-August and that there is still an attempt to try
18 and schedule maybe five or six more depositions, and that
19 there has been a representation that you're trying to conclude
20 all deps by the end of September. Is that accurate and true?

21 MR. MAGNANINI: From the plaintiff's side it is, Your
22 Honor. We've -- I think we've conducted about 12 deps since
23 we last spoke to you.

24 We did two days of Walsh Securities' 30(b)(6) deps.
25 We did two days of Betty Ann DeMola's deposition. We did a

1 day of James Walsh's deposition.

2 We fully concluded the deposition of Mr. Skowrenski
3 and National Home Funding, pending the issue of the settlement
4 agreement that the defendants had raised.

5 We also concluded -- well, depending on what we
6 receive in documents, we did a day of Commonwealth's 30(b)(6)
7 depositions. We did a very long day of Stanley Yacker's
8 deposition.

9 We did two days of Lorraine King's, who is Mr. Yacker
10 and Mr. Cicalese, is the two closing attorneys. She was the
11 secretary paid by Mr. Kane to process the loans.

12 We've done a day of Kelly O'Neill's deposition and
13 one day of Bob Agel, who is the head of -- the owner of
14 Coastal Title Agency. And we had deposed Mike Alfieri, one of
15 the other attorneys involved in the case.

16 And then, I think currently we've locked down Mr.
17 Pepsny's deposition. He was an attorney for Mr. Kane, Your
18 Honor, who was involved in the purchase and sale of the
19 properties. We actually had his dep locked in about a month
20 ago and then, the day before the deposition, he retained his
21 former criminal counsel, Mark Catanzaro.

22 So, between all of the lawyers' schedules: we've got
23 Mr. Pepsny scheduled for deposition on August 4th; and then,
24 pending Mr. Agel's personal counsel's ability to appear on
25 August 5th -- which, to show you the efforts we're doing to

1 get this case done; that's my birthday and I doubt I'll be
2 getting any cake from Mr. Kott or Mr. Hayes.

3 THE COURT: I'm sure Mr. Kott will at least have a
4 slice of birthday cake for you.

5 (Indiscernible - multiple speakers)

6 THE COURT: Remember, we're on the record, counsel.
7 Be careful about making those kinds of accusations.

8 MR. KOTT: Have a nice piece of cake as an out-of-
9 court settlement.

10 MR. MAGNANINI: So, that's scheduled for the 5th,
11 Your Honor, and then we've got a couple of other depositions.

12 We had tracked down Mr. Cuzzi, who was an individual
13 responsible for getting the straw buyers for Mr. Grieser. And
14 he resides in Edison, so his dep was scheduled -- his mother
15 apparently is 84; fell and broke her hip in Florida -- and
16 we'll have his deposition concluded by the end of August.

17 We also managed to serve Mr. Kane. After numerous
18 attempts, we finally got an attractive process server in
19 short-shorts to get him at a gas station, of all places. He
20 now has called me several times and, so, we'll be able to
21 schedule his deposition.

22 And then, we've got -- Mr. Hayes and I and other
23 counsel will work out a date for Nations' deposition.
24 Fidelity's 30(b)(6) deposition is scheduled for August 13th.

25 And then we've -- and the reason we put September

1 30th, Your Honor, is I think we had two names come up in the
2 30(b)(6)'s of Commonwealth, who I had not known before. One
3 of them is an in-house attorney who conducted the
4 investigation of the Walsh Securities claims. Her name is
5 Nancy Cook. And I'll speak with Mr. Kott about whether or not
6 he'd represent her as a former employee.

7 And so, the re -- like I said, the reason we put
8 September 30th, I think, in order -- we had -- we retrieved
9 all the documents we had from Latham and Watkins and from
10 Walsh Securities that we're reviewing for privilege and things
11 like that. So, it's probably going to take, with vacation
12 schedules, you know, the summer kind of stuff, and getting
13 these things reviewed, for privilege, copied.

14 We actually sent out all of the loan files and other
15 documents that we have been requested by the title companies
16 and I think they're all copied and ready to be sent to the
17 title companies. And then, people are going to have to review
18 these documents. I think there's, I don't know how many
19 pages; we're looking at a hundred thousand or --

20 UNIDENTIFIED MALE: A lot (indiscernible) --

21 MR. MAGNANINI: A lot of -- yeah, I think the -- just
22 the loan files were about 26 boxes and we --

23 THE COURT: But suffice it to say, Mr. Magnanini,
24 that all of the depositions that have been brought to the
25 attention of this Court thus far will be completed by

1 September 30th?

2 MR. MAGNANINI: Yes, Your Honor. Yeah. And these --
3 the couple of people who we've had the most trouble with, who
4 will -- shall remain nameless, but I think we've convinced
5 them that they'd much rather appear voluntarily than pursuant
6 to an order from Your Honor and handcuffs with the marshals
7 present. So, I think we've got any cooperation necessary, as
8 the groundwork laid, so we'll be able to get the deps
9 scheduled and finished by then.

10 MR. KOTT: Your Honor, it'd David Kott. If I can
11 just put a little fire report on that.

12 The answer to Your Honor's question is, yes,
13 September 30. The defendants have a few depositions where
14 we're awaiting resolution of some of the matters before Your
15 Court, before Your Honor.

16 We need to complete the Rule 30(b)(6) deposition of
17 the plaintiff. We're waiting for a ruling on one thing with
18 that.

19 We may or may not need to take some depositions,
20 depending upon the Court's ruling on whether we can use the
21 witness statements.

22 We have an application before Your Honor or we may in
23 the future for an individual deposition of Robert Walsh,

24 THE COURT: Okay.

25 MR. KOTT: -- who also appeared a few times as the

1 Rule 30(b)(6) .

2 And putting aside experts' deps, which we're not at
3 that stage, coming back to where I started, but the
4 contemplation is we'll get that done by September 30. I only
5 chime in, because I wanted to give the Court an inventory of
6 what the defendants might have left.

7 THE COURT: Okay. Anyone else want to chime on the
8 completion of the deps? I do have some issues that we're
9 going to get to that may impact some of this, so if --

10 MR. CALANNI: Yes, Your Honor.

11 THE COURT: -- anyone else wants to speak on that,
12 now is the time, in terms of just the deposition schedule.

13 MR. CALANNI: Yes, Your Honor. This is Richard
14 Calanni.

15 Did I hear that Betty Ann DeMola was deposed? The
16 last I heard, that Betty Ann DeMola had cancelled, because she
17 was going to a Yankee game. I don't know if --

18 MR. MAGNANINI: We had sent you letters on that, Mr.
19 Calanni. She was deposed twice, two days separately. I know
20 we had called you and e-mailed you about the second date,
21 definitely.

22 MR. CALANNI: Hmm. I don't recall any calls.

23 THE COURT: Well, Mr. Calanni, if that's of --

24 MR. CALANNI: As a matter of fact, (indiscernible)
25 she was at a baseball game.

1 THE COURT: If that is of interest to you, you should
2 contact counsel and see if perhaps you can get a transcript or
3 -- or if you, in fact, missed it, at least you'll have an
4 opportunity to see exactly what was posed to Ms. DeMola and
5 the like.

6 But let's move on, counsel. Is there anyone else
7 that needed to speak on the deposition schedule? We have a
8 lot of issues to discuss today.

9 Let's talk about the outstanding discovery requests
10 next. The parties intend to request Court-set deadlines.
11 Apparently, you are seeking deadlines:

12 A. For the defendants -- well, let me say it.
13 Deadlines for the production of documents, pursuant to 14
14 outstanding requests.

15 And the plaintiffs want a deadline for the 19
16 requests and the plaintiff also wants a Court-imposed deadline
17 against Defendant Fidelity due to the pending 30(b)(6)
18 deposition to be completed by Fidelity.

19 Let me hear from you folks on this. I want anything
20 that's outstanding turned over immediately. So, the first
21 question is, you know, how soon can we get this? Are we
22 talking about documents that are going to take a while to
23 secure? Or are they going to be pretty much readily available
24 within, like, a one-week or a ten-day period? Let me hear
25 from defendants first.

1 MR. KOTT: Yeah, it's David Kott again, Your Honor.

2 Speaking for Commonwealth, I don't think it's going
3 to take forever, because we've had the client pulling
4 documents since Mr. Magnanini has asked for them. So, the
5 other thing is, our firm has to go through some of those
6 documents, which I will confess we haven't gotten to.

7 But to answer your question, I would think in three
8 weeks we would be in a position to produce -- and I don't want
9 to represent all, but a good deal of -- to the extent we have
10 it, to produce a good deal of what Mr. Magnanini has asked
11 for. And the reason I say three weeks is it's a fair amount
12 of paper that I've got to find somebody who works for me to go
13 through.

14 THE COURT: Mr. Magnanini, what about on the
15 plaintiff's side? You're requesting about 19 outstanding
16 requests here.

17 MR. MAGNANINI: Yes, Your Honor. Those are the --
18 yeah, the documents we had requested were all -- from
19 Commonwealth, were all documents that had come up during the
20 30(b)(6) witness, in which their -- Commonwealth's corporate
21 representative had said she had consulted or reviewed or seen
22 documents in preparation for her testimony and couldn't give
23 me specific answers, because they were contained in the
24 documents.

25 And then, similarly, we had sent a letter to Mr.

1 Hayes, I guess. He had told me that there were some attempts
2 at foreclosing on some of the properties by another law firm,
3 (indiscernible) Stern Lavinthal, and that they had certain
4 files on some of these form loans. And I had requested from
5 Mr. Hayes prior to deposing the -- Ms. Sullivan, who is
6 actually -- she was the Commonwealth 30(b)(6) witness, but
7 she's also, I think, going to serve as the 30(b)(6) for
8 Fidelity and Nations, since she's currently employed by -- or
9 since they're all owned by the same entity, you know, Fidelity
10 something or other.

11 And so, what I was trying to get from Mr. Hayes was
12 the documents that he had prior to those depositions. And
13 then, we also had been -- had a list of document requests we
14 received from the defendants that we had listed in the letter,
15 Your Honor, and we had gone back and pulled documents that my
16 firm, Stone and Magnanini, had. We had gotten documents that
17 were -- Boies, Schiller and Flexner had in storage, that I
18 have gotten back. We've gone back and gotten the documents
19 from Latham and Watkins and we have those documents now.

20 And then, as Mr. Kott said, it's probably going to
21 take me three to four weeks to go through them, mostly because
22 my two associates, while some people may think they don't work
23 hard enough, they're working pretty hard, as (indiscernible).
24 And just to go through the documents -- because we have, like
25 I said, I think it's about another 100,000 pages of things

1 and the -- they -- none of the documents we have were
2 specifically in the categories that have been requested. They
3 were all pursuant to other requests made back in '97-98 time
4 frame and, so --

5 THE COURT: Okay. Then, is it fair to say, if the
6 Court sets a deadline of August 13th, which is a little bit
7 more than three weeks and a few days, that that's sufficient
8 enough time for both sides to come into compliance with any
9 outstanding discovery requests for the production of documents
10 on these two requests here?

11 MR. KOTT: It's David. The answer from me is almost
12 100 percent yes. I'm just leaving myself a little
13 (indiscernible). There's a document here, although it's a
14 little harder for the client to get their hands on --

15 THE COURT: Okay.

16 MR. KOTT: -- and I don't know that I can do that by
17 the 13th, but I -- but --

18 THE COURT: Well, notwithstanding the one or two
19 straggler documents --

20 MR. KOTT: Right. Right.

21 THE COURT: -- that may be difficult, I'd like to
22 have August 13th be the date by which both sides come into
23 compliance here.

24 MR. KOTT: That will work for Commonwealth.

25 MR. HAYES: That's acceptable for Fidelity and

1 Nations, Judge.

2 MR. MAGNANINI: Yeah, we'll give it a try, Your
3 Honor. My -- Mr. Mee and Ms. Wagner are looking at me like
4 I'm not. But I -- we -- I think we can get through most of
5 the stuff.

6 And, in any event, one issue we may have, Your Honor.
7 We sent out, like I said, the 26th we sent out about 44 boxes
8 of stuff for copying, which I understand is ready now. So, it
9 may take a little bit to get all this stuff copied, but I
10 think we can (indiscernible) everything and identify what we
11 have that's responsive by the 13th.

12 THE COURT: Okay. Let me move on here a little bit
13 here. I'm going to shift gears and move a little bit quicker
14 through some of these other issues.

15 There was another dispute -- well, I guess it's a
16 dispute here -- pertaining to transcription errors. The
17 defendants wanted to ask the Court to set a deadline for
18 plaintiff to respond to letters dated April 27th and May 27th
19 concerning possible transcription errors.

20 Now, I'm not really sure that this is something the
21 Court needs to be involved in at this point. I would seem to
22 me that the parties are trying to resolve this issue. But is
23 there anything that you believe that the Court needs to
24 address at this time on this particular topic?

25 MR. KOTT: Yeah, it -- it's David Kott. The

1 transcription errors relate to the Rule -- the two days of the
2 Rule 30(b)(6) deposition of the plaintiff. And we want just a
3 deadline for the plaintiff -- I think we can agree on most of
4 the errors, Judge, but we just want a deadline for the
5 plaintiff to either agree or disagree with us on the errors
6 before we take the last or the next day of the Rule 30(b)(6).

7 THE COURT: When is the next day --

8 MR. KOTT: And that's not going to --

9 THE COURT: Do we have a date --

10 MR. KOTT: Well, that --

11 THE COURT: -- or is that one of the issues for the
12 Court later on here?

13 MR. KOTT: Right, that's one of the issues for the
14 Court later on.

15 THE COURT: Yeah. Okay.

16 MR. KOTT: So, we don't need that right away, but we
17 would like a deadline for them just to respond. And, as I
18 said, I think we'll work it out, but I need to hear back from
19 them saying, yeah, we agree with your errors that they are
20 errors.

21 MR. MAGNANINI: Yeah. Your Honor, we'll actually get
22 that done in the beginning of next week. We're -- our client
23 is looking at the errors identified by the defendants and then
24 I'm going to -- and Ms. Wagner, we'll take a lead on it and at
25 the beginning of --

1 THE COURT: By no later than July 28th, that's one
2 week from today, I'm going to expect that this issue will be
3 resolved and that they will, the plaintiffs will respond to
4 the defendants with regard to the transcription errors.

5 MR. KOTT: Okay. Good. Thank you, Your Honor.

6 THE COURT: Let's move now into some of the disputes
7 that have been put before the Court, especially in this case
8 management order that was submitted on May 17th. There were,
9 I guess, some distinctions in the two proposed or competing
10 orders.

11 Starting with paragraph 4, which required the
12 plaintiff to identify all properties on which it intends to
13 pursue a claim under a title insurance policy and set forth,
14 with specificity for each property, the basis for the title
15 claim and the date and matter or notice to the defendants of
16 the title claim.

17 Now, let me hear very briefly from plaintiff and then
18 I'll hear very briefly from the defendants.

19 MR. MAGNANINI: Yes, Your Honor. We weren't -- I
20 were -- were concerned with the language of the "with
21 specificity" here as some sort of, you know, sand trap that's
22 being erected to say if we don't identify things with such
23 specificity, that the claims cannot continue.

24 It's our contention that the -- we have -- Walsh
25 Securities has claims under the closing protection letters

1 which were issued with each title insurance policy, according
2 to Mr. Agel's testimony for the title agency that issued the
3 title insurance. He said, if there was a mortgage on the
4 property, we would always issue a closing protection letter.
5 And then, Mr. Yacker, the closing lawyer on the majority of
6 the transactions said the same thing. So that these closing
7 protection letters were issued by the title companies for the
8 benefit of the mortgage banker and provided protection against
9 either fraud of the closing agents or failure to follow the
10 mortgage banker's closing instructions.

11 So, what we had alleged, I thought, in that complaint
12 again and again and again was, we were making a claim on 223
13 properties, pursuant to the closing protection letter. Then
14 there was a subset of those properties which amount to about
15 \$10 million dollars worth of claims of properties that Walsh
16 Securities repurchased from various whole loan purchasers or
17 that had been securitized, and those properties were brought
18 back. And because the properties were eventually lost in the
19 tax sales, we were making other title insurance claims on
20 those properties.

21 Now, the closing protection letters and the title
22 insurance policies I think are pretty specific and were not --
23 there's no way we're intending to make a windfall on this by
24 making a claim under both the CPL and the title insurance,
25 there's just different I guess legal routes to pursue the

1 claims from one from the other.

2 And relating to the specific title insurance claims,
3 we have gone back through the various files and located I
4 guess the majority of the closing protection letters and the
5 title policies; and then, what we've been doing is actually
6 tracking through the county records systems what had happened
7 to the properties when they were lost to tax sales, things
8 like that. That's been a fairly arduous process.

9 It's somewhat automated in Monmouth and Passaic
10 Counties. In some counties, like Ocean, they actually require
11 you to identify when these deeds were filed and, you know,
12 without -- with the paperwork we have in the various loan
13 files, we haven't been able to do that. So, we're actually
14 going to have to send people down to the county recorder's
15 offices and dig through these properties. And I think the
16 properties are in Essex, Hudson, Ocean --

17 THE COURT: Well, counsel, let me shift gears and do
18 this differently. Let me talk to the defendants and let me
19 hear from the defendants as to what it is that you are seeking
20 as to the more or greater degree of specificity here, so that
21 Mr. Magnanini can address your concerns directly.

22 MR. KOTT: Yeah, it's David Kott. I'm going -- I
23 know Mr. Hayes wants to be heard, also.

24 This is a fairly simple Rule 26 discovery request.
25 And that is, the plaintiffs on all the loans are making a

1 claim over something called a closing protection letter, which
2 covers -- in very general exceptions, Judge -- covers an act
3 of dishonesty of a lawyer or a failure of a lawyer to follow
4 what are called written closing instructions.

5 Second claim one some of the loans they're making
6 under a different document, which is the title insurance
7 policy. We sent Mr. Magnanini for your loans, each of your
8 loans -- Smith loan, Jones loan, Cullen loan -- tell us what
9 the act of dishonesty was of the lawyer or tell us how he
10 failed to follow the written closing instructions or, if it's
11 a policy claim, these policies got a lot of different things,
12 tell us what your policy claim is; meaning, tell us exactly
13 what this lawyer did or tell us exactly why you don't have
14 good title. Which, in a coverage action, is the most basic of
15 discovery.

16 So, what we're seeking is to have the plaintiff, for
17 each loan, say, look, under the closing protection letter on
18 the Smith loan, here is the act of dishonesty of the lawyer
19 and/or here is the (indiscernible) closing instructions and
20 how he failed to follow them. Or, if on the same or a
21 different loan they're making it under (indiscernible) under
22 the policy, here's why we have coverage under the policy.

23 And as I said, Judge, we're 12-14 years in the
24 litigation, this is every day basic discovery in insurance
25 coverage disputes. So, answering the Court's question

1 directly, that's what we're looking for.

2 I'll yield to my friend, Mr. Hayes.

3 MR. HAYES: Yeah, Judge, and this is Ed Hayes.

4 Part of the reason why we asked that it be done this
5 way is our alternative was to have asked the Rule 30(b)(6)
6 witness these questions on 220 different transactions to try
7 to figure out whether they were making Type A Claim, the Type
8 B Claim, and what the evidence was to support it. And as Mr.
9 Kott I believe submitted in some of his letters to the Court,
10 it appears that there was an agreement by plaintiff's counsel
11 that it was better that this information be supplied the way
12 Mr. Kott and I suggested, rather than having to actually ask
13 the witnesses about 220 different loan files.

14 So, not only do we think we're entitled to this
15 information, but we think the mechanism that we proposed to
16 plaintiffs and to the Court is a mechanism that will save
17 everyone a lot of time and money. And we shouldn't left to be
18 guessing, as was suggested to us at one point in time, at the
19 time of trial, well, these are the claims we intend to present
20 on these particular properties.

21 And the fact that they are now going out to the
22 public records, Judge, to try to figure out on which
23 properties they have a title claim is really evidence of why we
24 need that information.

25 THE COURT: Mr. Magnanini?

1 MR. MAGNANINI: Yes, Your Honor. Well, we're not
2 going out to the public records to get evidence of this, we
3 knew what we had repurchased and, as a matter of fact, all
4 this information was previously provided to the defendants
5 during the mediation. We gave them a list upon list of here's
6 the loans insured. And the loans insured by Commonwealth and
7 Fidelity were done -- you know, they were -- claims were made
8 back in July of 1997, the loans were listed.

9 And the specificity, the thing that's confusing to
10 me, I mean, the specificity is what -- in our complaint, that
11 all of these loans were part of the same fraudulent scheme.
12 We deposed Mr. Yacker on his closings and we had his ledger;
13 and so, after each transaction, checks were cut to file and
14 record the deeds and the mortgages in Monmouth County and each
15 one of those were then voided.

16 So, the properties, the deeds, the mortgages were
17 never recorded and then we found out that Mr. Agel and Coastal
18 Title had recorded 200 and -- well, 150 deeds and mortgages
19 out of 300 recorded in Monmouth County over a three-day period
20 in April of 1997. So, the claim about the dishonesty of the
21 lawyers -- and we haven't deposed Mr. Cicalese yet -- is laid
22 out in our complaint and then -- and the specific loans
23 themselves have been identified to the defendants.

24 And so what we're doing now is going through, in
25 order to prep for summary judgment for trial, to go through

1 and actually have the documentation showing that -- you know,
2 that the tax sale occurred in 2000 in Asbury Park. And, you
3 know, and as title companies, they've got much quicker access
4 to this public information than we do. We're having to kind
5 of plod through it with associates and paralegals.

6 But that's -- that's why I'm saying, I looked --

7 THE COURT: Okay. Well, counsel, thank you.

8 After having heard from both sides and having
9 reviewed your submissions, I find that it is proper discovery
10 and that the plaintiff shall provide with specificity -- now,
11 I agree and I understand the concerns by plaintiff that this
12 should not be a sand trap that, to the extent that the
13 plaintiff needs to supplement this response later, you are
14 free and certainly entitled to do so. But at this time, I do
15 believe that the defendants need to and are recommending a
16 more efficient mechanism to get through some of this by
17 requesting greater specificity.

18 So, I am going to order that the plaintiff provide
19 the discovery that's being sought with regard to this
20 particular request.

21 I want to move on and talk about what was set forth
22 under paragraph 5, which requires the plaintiff to identify
23 all loan transactions on which it is asserting a breach of
24 contract claim under closing service letters and supply as to
25 each such loan a copy of the application closing service

1 letter and the closing instructions supplied by plaintiff in
2 connection with the loan, as well as a specific bases for the
3 claim that the defendants are liable under the closing service
4 letter.

5 Let me hear from defendants on this.

6 MR. KOTT: Yeah, I think the argument is the same.

7 THE COURT: I think it's the same, too, --

8 MR. KOTT: I don't have any --

9 THE COURT: -- as well, counsel. I don't see
10 anything really different here and I believe that it is proper
11 discovery here. And for the reasons set forth as to the
12 previous request, I find that this too should be complied with
13 as requested by the defendants.

14 MR. MAGNANINI: Your Honor, and is there a deadline,
15 Judge, for that to be done?

16 THE COURT: One -- let me finish going through these,
17 counsel, first. Let me take another look here.

18 Under paragraph 24, there is a request that the, at
19 the next status conference the Court will set a date for the
20 continued deposition, the 30(b)(6) deposition of Robert Walsh,
21 in his individual capacity, shall be dispose -- deposed and,
22 if so, we need a date for the deposition.

23 Okay. Mr. Magnanini, what are we talking about in
24 terms of having to do this supplementation with the greater
25 specificity and also complying with paragraph 5? How much

1 time do you believe that this is going to take?

2 MR. MAGNANINI: Probably, like 45 days, Your Honor.

3 We -- one of the things with paragraph 5 is that the documents,
4 while some of them were Walsh Securities' files, some we've
5 had to pull from Mr. Yacker's files, from Mr. Kane's files,
6 from Fidelity's files, from Commonwealth's files. And
7 Commonwealth did not have a lot of -- had about 197 pages of
8 documents they produced, but there were some closing service
9 protection letters in there, under Commonwealth.

10 And then, so one of things we got to do was actually
11 go through the entire repository of documents from Mr. Pepsny
12 and Mr. -- like I said, Mr. Yacker, Cicalese's documents, Mr.
13 Kane's -- and go through everybody's to make sure we have been
14 able to identify all these closing service protection letters.

15 THE COURT: Okay. So, you're saying 45 days. Mr.
16 Kott and Mr. Hayes, does that present a problem, 45 days?

17 MR. KOTT: It does not, and I'm assuming with that,
18 the Court will build that into the schedule so we'll have a
19 little time to react to it. But assuming that that -- the
20 Court builds that into the schedule, giving us a little time
21 to react, that is not a problem on my end, Your Honor.

22 MR. HAYES: And this is Ed Hayes. It's fine by me,
23 too, Judge.

24 THE COURT: Okay.

25 MR. KOTT: Okay.

1 THE COURT: Well, let's move on and talk about this
2 30(b)(6) dep of Robert Walsh. Mr. Magnanini, let me hear from
3 you first on this.

4 MR. MAGNANINI: Yeah, I'm not quite sure why it's in
5 there, Your Honor. We -- Mr. Walsh was -- has been deposed
6 for two days already and I'm -- I can't tell you how many out
7 of the 14 hours we've used up. So, whatever time is left,
8 he's going to come back for a third day.

9 I think Mr. Kott and Mr. Hayes are going to want, you
10 know, what's in paragraph 4 and 5 ahead of that time and we
11 figured that Mr. Walsh has been making himself available for
12 the deposition. So, I think once we get him, the -- or the
13 defendants sees -- they sent from --excuse me, Your Honor, I
14 got the Jersey summer crud here. Once we get them this
15 information, we'll schedule Mr. Walsh's deposition in
16 September, and then that'll be taken care of.

17 At that point, though, I don't think they have --
18 they need an individual day of Mr. Walsh, I think they'll
19 have, like, three days of 30(b)(6). A number of questions
20 that have already been asked concerned Mr. Walsh's personal
21 experience in the mortgage business, in this industry, things
22 like that, and we have not been objecting or instructing Mr.
23 Walsh not to answer any sort of question in his personal
24 capacity.

25 So, from the plaintiff's side, Judge, once I think the

1 defendants get the information they have requested, we'll
2 schedule the deposition in September and that will occur and
3 that will be that.

4 MR. KOTT: Your Honor, it's David. I think what the
5 dispute here -- and I'm not sure it's ripe for Your Honor
6 right now, although you may want to deal with it. We are
7 entitled to a third day of the Rule 30(b)(6). I have said to
8 Mr. Magnanini we may also want to depose Robert Walsh, who was
9 the principal, if not -- you know, owned the company for the
10 most part. Didn't own all the stock, but owned most of it.
11 And ran the company. He was the head guy at the company. And
12 I said we might want to depose him in his individual capacity,
13 as well.

14 And the reason I say that might not be ripe, and
15 unless Mr. Hayes disagrees, if maybe we'll do the third day as
16 in his Rule 30(b)(6) and not ask Your Honor to let us depose
17 him individually. So, if the Court is comfortable awaiting on
18 that issue, then I think we don't have to deal with it now.
19 On the other hand, if Your Honor wants to get everything in
20 one order, maybe you do need to deal with it, Your Honor, so
21 that way the parties know --

22 THE COURT: I actually, I agree with the prior course
23 of action here. I think that it is not ripe. I think that
24 it's not even properly in front of the Court, because you
25 don't know if you are, in fact, looking to take this

1 deposition. So, I think, at the conclusion of the 30(b)(6)
2 deposition, if in fact you are seeking to depose him in his
3 individual capacity, that the appropriate time to make that
4 request would be when, in fact, it is a request. And right
5 now, from what I'm hearing and what I've read so far, you are
6 not really seeking that, that you're looking to complete the
7 third day of the 30(b)(6).

8 So, I am going to defer ruling on any individual
9 capacity deposition until such time that one is put before the
10 Court.

11 The next issue --

12 MR. KOTT: Your Honor?

13 THE COURT: Yeah. Go ahead, I'm sorry.

14 MR. KOTT: Oh, I'm sorry, I thought you were moving
15 from Walsh, because I -- you might hit what I thought was
16 going to be the next issue and I'll wait until Your Honor
17 talks.

18 THE COURT: Okay. I'm going to run through my
19 issues, Mr. Kott, and then --

20 MR. KOTT: Okay.

21 THE COURT: -- you can run through yours.

22 Let's finish with this -- well, I want to move into
23 this whole issue of whether the parties can inquire at the
24 deposition as to the terms of the settlement between the
25 plaintiff and co-defendants, Robert Skowrenski and National

1 Home Funding. Let me hear from defendants first on this and
2 then I'll hear from plaintiffs.

3 MR. KOTT: Yeah, it's David Kott again.

4 It's our position this is a discovery dispute and the
5 question is whether, under Rule 26, this is discoverable. And
6 beyond that, for -- whether there's any privilege that applies
7 to it.

8 A. It's discoverable, because the plaintiffs sued in
9 a number of complaints -- the original, first, second -- a
10 number of defendants with very serious allegations. I mean,
11 RICO, intentional fraud; very serious allegations alleging
12 that many of these people were at the center of the fraud.
13 And now the plaintiff has dismissed it against them and,
14 apparently -- I say apparently -- released them. And that --
15 I think, under Rule 26, that's proper discovery.

16 Meaning, what was the reason you let these defendants
17 out? Was there an agreement that they were going to testify
18 one way or the other? And I'm not -- let me underline the
19 word not -- suggesting any impropriety on the part of
20 plaintiff's counsel when I say that, but this is potentially --
21 and I'm not a criminal lawyer -- this is essentially, in my
22 view, a flip situation where, of course, the criminal
23 defendant is entitled to know the terms of the prosecutor
24 agreeing to drop the indictment against a witness.

25 As to any privilege, when we inventory the privilege,

1 they may have decided that they were going to keep that
2 confidential and it might be that someone who has no interest
3 in this would not be able to get to it, meaning some third
4 party would want to come in and (indiscernible).

5 But this is us, this is the parties, remaining
6 parties, who want it, and I don't see any privilege that would
7 apply as attorney-client or otherwise, that would take away
8 our Rule 26 right to the information.

9 MR. HAYES: And Judge -- this is Ed Hayes speaking.
10 And one of the reasons it becomes particularly important as to
11 National Home Funding is that all of the closing protection
12 letters upon which Walsh brings its claim were actually issued
13 not to Walsh, but to National Home Funding.

14 And one of the defenses that had been raised by the
15 title defendants in this case is that you, Walsh, as the
16 assignee, stand in the shoes of the assignor here, the very
17 person that in all of your complaints you had alleged was
18 intricately involved in the fraud. Now, all of a sudden, when
19 that defense has been raised, there has been a resolution with
20 NHF, witnesses sort of backing off of what they believe NHF
21 did or didn't do.

22 And, as Mr. Kott said, I think this is a credibility
23 question where we should be able to explore what discussions
24 took place and what settlement was reached when it affects
25 part of the defenses that we've asserted in this case.

1 THE COURT: Okay. Let me hear from plaintiff's
2 counsel.

3 MR. MAGNANINI: Yes, Your Honor. Yeah, we were
4 actually a little taken aback by this one, because I think
5 they are alleging improper conduct on the part of us.

6 Mr. Kott's letter that he sent to you has the word
7 flipped in there twice and, you know, I think it's because the
8 testimony that they expected they would get they didn't get.
9 Now, we had -- you know, and for Mr. Skowrenski, Mr. Manning
10 will tell you, I have never spoken to him. We didn't talk to
11 him. We had settled with various people in this case, because
12 of, you know, the reasons people settle cases: no assets,
13 people living in their parents' basement and things like that.

14 And but we had offered, Your Honor, to do was to send
15 you the settlement agreements, which are very simple, very
16 straightforward. They each have a bargain for confidentiality
17 provision. And you can look at them yourselves and see if
18 there's anything about testimony flipping, any of this sort of
19 stuff. So, we thought it was simply a way the defendants were
20 trying to cast not only aspersions on counsel, but on our
21 client, as a way of proceeding in the litigation.

22 Furthermore, this I think ties into our request for
23 these various cross-claims. Mr. Kott's letter to Your Honor
24 had listed that one of the reasons he thought they were
25 entitled to this information, that even though the parties had

1 bargained for confidentiality, which was one of the reasons
2 Your Honor found that the record should be sealed on the
3 settlement agreements that had been filed, was that they were
4 entitled to some sort of offset for any sort of -- any monies
5 paid by these parties. And, again, I don't think that's
6 correct.

7 The claims against the title companies are based on
8 the contract, the title insurance policies and the closing
9 protection letters issued by the title companies to protect
10 the mortgage banker from the acts of their closing agents.
11 They've got nothing to do with any of the tort claims that
12 were asserted against people for fraud or RICO. So, I don't
13 think they have any sort of basis to get these settlement
14 agreements, because of the confidentiality provisions that the
15 parties bargained for and obtained and the fact that there
16 isn't any type of offset that are due them.

17 And like I said, what we did offer was, we'll send
18 them to Your Honor and you'll look at the things. There's
19 nothing in there about anybody flipping or anything like that.
20 So, the fact that the defendants are unhappy with the
21 testimony that's been given in this case, you know, they're
22 competent attorneys, they have ways of attacking it and
23 twisting this thing.

24 And the other thing I do want to point out is that,
25 as Mr. Hayes said, you know, it seems strange that to them

1 that these closing protection letters were issued in the name
2 of National Home Funding, but they were actually issued to
3 National Home Funding and their assigns. And the expectation
4 was these mortgages would be assigned and concurrent with the
5 transactions (indiscernible) by National Home Funding to Walsh
6 Securities.

7 So, it -- you know, there was never any sort of plan
8 or anything like that back in 1996 and '97 that somehow NHF
9 would receive the closing protection letter and it was a front
10 for Walsh Securities. These properties were -- National Home
11 Funding was the mortgage broker. They got the buyer and then
12 Walsh Securities funded these loans with its money being wired
13 to the closing agents of the title companies at their offices
14 in order for the loans to close.

15 So, the settlement agreements which occurred some
16 during the mediation that was ordered by Judge Arleo under the
17 auspices of retired New Jersey Superior Court Judge John
18 Boyle, you know, are what they are. There's confidentiality
19 provisions. We don't think they should be turned over. We
20 don't think there's any credit that should be given and, if
21 Your Honor wants, we'll send them to you and you can look at
22 them *in camera* and make your decision that way.

23 THE COURT: Okay.

24 MR. CALANNI: May I --

25 MR. KOTT: Judge, I --

1 MR. CALANNI: May I speak? This is Richard Calanni.

2 THE COURT: Okay, Mr. Calanni, go ahead.

3 MR. CALANNI: I'm not an attorney, I can't quote all
4 the law that is involved; but basically speaking, on a
5 layman's term from my mouth, if claims were made such as the
6 plaintiff has made and deals are now being made where they are
7 closed, eliminating them from the lawsuit doesn't make a bad
8 guy go away. And by not seeing what the deals were made, how
9 are the defendants supposed to defend themselves if supposedly
10 a bad guy isn't now a bad guy anymore in the claim?

11 So, while deals are made all the time in court, of
12 course, in this particular case, 15 years have gone by. As
13 the plaintiff starts saying, well, we'll make a deal here and
14 you're now out of the case, how does that bring out the truth?
15 Is the truth now part of the picture which benefits the
16 plaintiff to see it this way or see it that way? Do you watch
17 half of a screen?

18 Now, either the case is what it is or the case isn't
19 what it is. And with this kind of a deal and then closing the
20 deal where the defendants can't see what the deal was, how do
21 defend yourself? Just because the plaintiff says, well,
22 you're not included no more? So, personally, that's how I see
23 it.

24 MR. HAYES: Judge, if I may? This is Ed Hayes. The
25 offer to simply submit the settlement agreement to Your Honor

1 for review doesn't really address the issue that Mr. Kott and
2 I are talking about. We're talking about not just what's in
3 the settlement agreement, but what the negotiations were, what
4 discussions there were between the parties, what may not have
5 been included in the settlement agreement.

6 And it may be that that discovery, Judge, discloses
7 exactly what Mr. Magnanini says we will end up finding in this
8 case, which is nothing. But I think we are entitled to make
9 that exploration in order to determine if there is anything
10 going on here that is available as a defense to the defendants
11 in this case.

12 MR. MAGNANINI: Well, the problem with that, Your
13 Honor, is the --

14 THE COURT: Well, counsel, actually I have heard --

15 MR. MAGNANINI: -- the negotiations --

16 THE COURT: -- enough on this. And I think --

17 MR. MAGNANINI: Okay.

18 THE COURT: Mr. Hayes, I think that you're right that
19 turning these things over to the Court is not going to be of
20 any assistance to you for the reasons that you're seeking the
21 documents. However, I disagree with you, I don't think you're
22 entitled to them. I am not going to compel them.

23 And I think that Pansy versus The Borough of
24 Stroudsburg made very clear that, where private litigants enter
25 into a legitimate settlement agreement and there is a

1 confidentiality provision where there is no real public
2 interest at issue, that the Court should uphold that and
3 respect it. I am not seeing anything and certainly nobody has
4 put forth any case law that would militate in favor of
5 compelling this disclosure under Rule 26.

6 As I look at it, I think that Mr. Magnanini has set
7 forth and entered into a bonafide settlement agreement and
8 that settlement agreement has -- it contains a confidentiality
9 provision. And nothing that I have heard thus far persuades
10 me that that should be broken.

11 So, accordingly, I am not going to compel that those
12 settlement agreements be turned over as part of any discovery.

13 I want to move on and talk about dispute number 3.
14 And Mr. Magnanini kind of forayed into this as it deals with
15 the re -- plaintiff's proposal that the Court dismiss *sua*
16 *sponte* all the cross-claims of indemnification and
17 contribution. Let me hear from you folks on this issue. Mr.
18 Magnanini, --

19 MR. CALANNI: Yeah, Richard -- oh.

20 THE COURT: -- let me hear from you first.

21 MR. MAGNANINI: Yes, Your Honor. We had -- yeah, as
22 I've said, I kinda meandered into that. We had -- when we had
23 amended our complaint to the four (indiscernible) actually
24 streamlined the complaint and taken out all the various
25 parties who we -- against whom Walsh Securities has either

1 retained a judgment or a settlement. And that actually left
2 just a number of -- I think it left us with five parties or
3 six parties, and then it was very kind of streamlined case.

4 At that point in time, the defendants objected saying
5 they had cross-claims against the various parties, and so we
6 went back and forth. And rather than engage in some more
7 motion practice, we left everybody in the caption and in the
8 case. Since then, the defendants have sought to use our
9 leaving the parties against whom we've dismissed claims or we
10 settled claims in the case as a sword and kind of bludgeon us
11 with it, and it has come up in depositions and in
12 correspondence to the Court.

13 And as we were looking at this, like I said, our kind
14 of stake in the matter as the plaintiff is that the law in the
15 case seems very clear. Both Judge Bassler and Judge Debevoise
16 had previously ruled on efforts by the title companies to
17 assert contribution and indemnification claims against parties
18 against from whom the plaintiff was only seeking recovery in
19 tort.

20 And of the parties like that, that would be Mr.
21 Calanni; I guess Coastal Title we only have the RICO claim
22 against; and then, they had actually sought it in the context
23 of a third-party complaint against Mr. Walsh, Mr. DeMola and
24 James Walsh, saying that they have -- they owed a duty to the
25 title companies and they had run Walsh Securities in a

1 negligent manner, allowing it to be defrauded and, therefore,
2 they were entitled to contribution and indemnification.

3 And we think, though, the Third Circuit law, the
4 District of New Jersey law and the law of this case is very
5 clear that, because the only claims the plaintiff has asserted
6 against the title companies are for contract, they don't have
7 any sort of cross-claim for indemnification or contribution
8 against parties against whom Walsh Securities has asserted
9 tort claims. So, -- and Judge Debevoise recently agreed with
10 us and dismissed the third-party claims and then -- and Judge
11 Bassler had previously dismissed claims against Ms. Difeo and
12 Ms. Pepsny and a couple of other entities.

13 And we thought, by -- it's kind of a strange --
14 because of our kind of interest in that, you know, we don't
15 think they're entitled to any sort of setoff. We were in a
16 somewhat difficult position. Now we actually have parties --
17 I know Mr. Calanni, I know Coastal Title, I know NHF have all
18 requested the ability to file a motion on this to get a ruling
19 a ruling saying there are no cross-claims that can be, you
20 know, continued by the defendants against whom the plaintiff
21 only asserts claims in contract.

22 So, that would streamline the case considerably,
23 clear out a lot of deadwood and prevent kind of future
24 disputes about the allegations that you heard Mr. Kott use
25 before, the really serious allegations for RICO and fraud and

1 things like that. And they were asserted and either Walsh
2 Securities has obtained judgments or settled with the people
3 on almost all of those allegations. And that's what we are
4 trying to do, is present the Court with a much narrower
5 streamlined case for resolution. And like I said, --

6 THE COURT: All right. Let me hear from --

7 MR. MAGNANINI: -- at this point, though --

8 THE COURT: Let me hear from defendants on this.

9 MR. KOTT: Yeah, I -- let me run through it. It's
10 David Kott. I'll run through the inventory, and there is an
11 inventory.

12 First of all, this is a dispositive motion and I
13 don't believe, under the federal statutes, anybody other than
14 a district court judge can grant a dispositive motion.

15 Second, it is motion done on a letter; meaning, it
16 doesn't meet the local rule requirement (indiscernible)
17 briefed where -- and the reason I'm relying on that formality
18 is I and Mr. Hayes would normally brief it on the merits.

19 Third, I don't believe Mr. Magnanini, as attorney for
20 the plaintiff, has standing to ask the Court to dismiss a
21 cross-claim we filed that's not against his client.

22 Fourth -- let me just look at my notes here, Your
23 Honor. Fourth, let me give you the --

24 MR. MAGNANINI: (Indiscernible) procedural stuff,
25 David.

1 MR. KOTT: Yeah, let me -- fourth, he is wrong on the
2 merits and I'd like to be able to submit a brief on that.

3 And fifth, let me just address a practical thing, if
4 the legal arguments I had given you don't carry the day, Your
5 Honor. If our cross-claims are dismissed, then we would file
6 a third-party complaint. Because, if there's something
7 procedurally deficient -- meaning, we're not allowed to file
8 cross-claims -- assuming we have an argument on the merits,
9 we'll file a third-party complaint against these same
10 defendants.

11 And in sum, what's occurred here, Your Honor has a
12 letter from Mr. McGowan and Your Honor also has a letter from
13 Mr. Manning -- both of whom are on the phone call --
14 requesting relief to file motions to dismiss our cross-claims;
15 meaning motions on the merits. Obviously, that would be a
16 motion addressed to the district court judge and that is the
17 procedure we should be using. Meaning, if our cross-claims
18 are going to be dismissed, Your Honor should allow whoever
19 wants to dismiss our cross-claims to file a motion and then
20 we'll brief it and we'll tee it up for the district judge.

21 THE COURT: Okay. Thank you, counsel.

22 Well, you know what? There's no really need to have
23 a lengthy discussion here, I think this is almost clearer as a
24 matter of course that this Court is not going to issue any
25 kind of *sua sponte* dismissal here. And if any motions to

1 dismiss are to be made here, they should be made by way of a
2 formal motion, and Mr. Kott is correct that that should be
3 made to Judge Debevoise here. That's not the kind of even
4 report and recommendation that this Court would support,
5 because clearly there are issues here that require briefing in
6 the form of dispositive motions.

7 So, I'm going to put that to rest by denying any
8 request for any kind of *sua sponte* dismissal of any cross-
9 claims or -- for indemnification or contribution.

10 MR. MCGOWAN: Your Honor, if I --

11 THE COURT: And --

12 MR. MCGOWAN: Your Honor, if I may? Martin McGowan
13 from Methfessel's office. I represent Coastal and I'm one of
14 the two that has a letter with the proposed form of order
15 permitting me to file such a motion --

16 THE COURT: That's the next issue, --

17 MR. MCGOWAN: -- sent to Your Honor.

18 THE COURT: -- counsel, that I wanted to get to. And
19 the question for you and anyone else on the line is: are we
20 done with any discovery that might impact a motion for summary
21 judgment with regard to this -- your claims?

22 MR. MCGOWAN: I think we are, because it's very
23 clear. My application is going to be really addressed to the
24 pleadings as they presently stand. I am a tortious -- you
25 know, albeit close to an intentional tortious -- direct

1 defendant. There is no negligence claim against me as a
2 defendant. The title insurance companies are contract
3 defendants, they are not tort defendants. That's not going to
4 change, Your Honor.

5 And because of the applications that have already
6 been made in this case -- a year, a year, two years ago even --
7 I think that, A, is the law of the case; and B, you can't mix
8 the apples and the oranges. And, again, and the
9 (indiscernible) proof here is not going to change no matter
10 how many depositions you take. That would be my position.

11 MR. CALANNI: This is Richard Calanni. I am not
12 perfectly sure what kind of a motion I might deposit, because
13 I have just gone through all the depositions and what
14 discovery I've gotten from that and I'm just finalizing after
15 this conference.

16 THE COURT: Okay. Well, I --

17 MR. CALANNI: I think (indiscernible) but like --

18 THE COURT: -- I think what we should do here is I
19 want the parties to meet and confer and come up with a
20 briefing schedule. I think it is appropriate, if all of the
21 discovery is done and it is, as counsel has presented to the
22 Court, certainly there is no interest to be or greater good to
23 be achieved by keeping parties in if they, in fact, have a
24 legitimate grounds to be heard, on which they could be out of
25 the case.

1 So, was it Mr. McGowan that just spoke?

2 MR. MCGOWAN: Yes, sir.

3 THE COURT: Mr. McGowan, you should --

4 MR. CALANNI: And Mr. Cal --

5 THE COURT: -- confer with your adversary and present
6 to the Court a briefing schedule for a dispositive motion on
7 behalf of your clients.

8 MR. KOTT: And Your Honor, the -- it's David Kott. I
9 just wanted to say one thing, just so we have a full record.

10 If Mr. Manning and Mr. McGowan are going to move on a
11 purely legal basis, as Mr. McGowan -- and that's what Mr.
12 McGowan just articulated -- then I don't think we need any
13 other discovery. However, if they're going to include in part
14 of their motion -- I'm going to use vernacular -- "my guy
15 didn't do anything wrong," then we do need to complete the
16 discovery to do that. I don't think that's Mr. McGowan's
17 intent. But I had some conversations with Mr. Manning, who
18 can speak for himself; I don't know whether that's his intent.

19 Mr. Manning --

20 THE COURT: Counsel, that is precisely -- Mr. Kott,
21 that is exactly the question that I just asked before saying
22 that, if there -- if it is strictly a legal issue; then, yes.
23 But I asked if there was any other discovery. And if there is
24 fact discovery, --

25 MR. KOTT: Well, I'm not --

1 THE COURT: -- and, Mr. Manning, if you want to speak
2 -- if Mr. Manning on the line here?

3 MR. MANNING: Yes I am, Your Honor.

4 THE COURT: Do you -- is it your position that there
5 is additional fact discovery that needs to be done here?

6 MR. MANNING: No, that's not my position, I think
7 that's Mr. Kott's position.

8 THE COURT: Okay.

9 MR. MCGOWAN: Yeah, and it's -- this is McGowan --
10 it's not my position either.

11 THE COURT: All right. Well, in that case -- Mr.
12 Kott, I appreciate you raising the issue -- if there is no
13 additional fact discovery here, then I think that the matter
14 is ripe to be presented to the Court for a dispositive motion.
15 If, in fact, there is additional discovery, I'd like to know
16 about it. So, I want to -- I want some kind of correspondence
17 if any of the parties here believe that there's additional
18 fact discovery that weighs in.

19 If not, I think that the parties should meet and
20 confer and present to this Court a proposed briefing schedule
21 for the dispositive motions.

22 MR. KOTT: Right. And, Your Honor, that will turn,
23 whether additional discovery is needed, will turn on what the
24 arguments Mr. McGowan and Mr. Manning are going to make. So,
25 they can just let Mr. Hayes and I know are they only arguing

1 purely legal; then we might be able to tee this up for the
2 district judge.

3 THE COURT: Well, we're on the record and that's the
4 representation that they've made to this Court.

5 MR. KOTT: All right.

6 MR. MCGOWAN: I'm looking at my brief right now, it
7 doesn't say anything about "my guy did nothing wrong," it's
8 simply --

9 MR. KOTT: Okay.

10 MR. MCGOWAN: -- cross-claims.

11 MR. KOTT: Okay.

12 MR. MANNING: It's the same for my position, Your
13 Honor. This is Mr. Manning --

14 THE COURT: Okay.

15 MR. MANNING: -- for Skowrenski and NHF.

16 THE COURT: All right.

17 MR. CALANNI: And this is Richard Calanni. As far as
18 possibly going forward asking for leave, we're talking no
19 deadline at this point, Your Honor? This is to go forward?

20 THE COURT: I'm not sure I understand what you're
21 saying. As to Mr. Calanni.

22 MR. CALANNI: Well, from the discovery, if one feels
23 discovery has shown that a request for leave of dismissal of
24 charges against the individual, is there a deadline based on
25 that or -- or --

1 THE COURT: Well, I think what -- what I want to know
2 -- well, and it is -- I think Mr. Kott is correct that it's
3 going to turn on what legal arguments are being made. If, in
4 opposition or in response, there are issues of fact that still
5 have not been fully fleshed out through discovery, then I want
6 to know about it.

7 Now, I'm not sure if you're speaking about the
8 previous requests or if you have a separate interest that
9 you're asking about.

10 MR. CALANNI: I have a separate interest on discovery
11 of the cross -- of the -- of deposing the witnesses and the
12 defendants that have just taken place within the last couple
13 of months. And personally, from my cross-examining witnesses,
14 there are none that have implicated me and I would like to go
15 forward and --

16 THE COURT: Well, again, I think you should talk with
17 plaintiff's counsel, talk to your adversary, and if he agrees
18 that you -- that there is purely simply a legal issue that
19 remains that could resolve the issue as it relates to you,
20 then you too might be ripe for a summary judgment motion. But
21 I need a joint briefing schedule here indicating that both
22 parties agree that this matter is ripe for adjudication by way
23 of a summary judgment motion.

24 MR. MCGOWAN: And Your Honor, we'll send that letter
25 to you?

1 THE COURT: Yeah.

2 MR. MCGOWAN: Okay.

3 THE COURT: Everything comes to me, except for the
4 actual motion itself, which will go to Judge Debevoise.

5 MR. CALANNI: Fine, thank you.

6 THE COURT: All right. Let's go over everything very
7 quickly and see what else is left on your agendas. I've kind
8 of run through what I gleaned from the letters here.

9 Let me start with Mr. Magnanini. Is there anything
10 left on your agenda that we need to discuss today?

11 MR. MAGNANINI: I think the only thing we have left,
12 Your Honor, was the question of these witness statements.
13 That I think we just need to set up a briefing schedule.

14 We had thought that the -- during the internal
15 investigation that Latham and Watkins conducted at Walsh
16 Securities, we had interviewed a number of Walsh employees and
17 we had provided those witness statements for the purposes of a
18 mediation to the defendants. When the mediation did not
19 conclude the case, we had asked all statements to be returned.
20 The defendants have not wanted to return the statements and I
21 think they may have already been used during some of the Walsh
22 30(b)(6) depositions.

23 But we had thought that they -- that the majority of
24 the statements are attorney work product. Some of this stuff
25 I had -- or we had redacted out of the statements, but not

1 everything. We had wanted the witness statements returned.

2 I think on that one, we just need a briefing schedule
3 for Your Honor on the discovery dispute. We can, you know,
4 submit something in ten days or two weeks and then --

5 THE COURT: All right. Well, let's go through it
6 right now.

7 MR. MAGNANINI: -- then they can put in their
8 opposition on --

9 THE COURT: Mr. Magnanini, you're going to be the
10 moving party here, correct?

11 MR. MAGNANINI: Yes, Your Honor.

12 THE COURT: Today is July 21st. How soon can you get
13 the moving papers in?

14 MR. MAGNANINI: August? If we got these deps, we had
15 the -- oh, you're out next --

16 THE COURT: Look, we're in the thick of the summer.
17 I recognize that a lot of folks have vacations scheduled. So,
18 I would much rather hear from you than me just issue some
19 arbitrary dates.

20 MR. MAGNANINI: Yeah, how about August 16th, Your
21 Honor?

22 THE COURT: Okay. How about opposition? How soon
23 can the opposition be made on this?

24 MR. KOTT: It's David. I'm thinking two weeks, Your
25 Honor?

Colloquy

50

1 THE COURT: I couldn't hear you too well, Mr. Kott.

2 MR. KOTT: I'm sorry. I'm thinking two weeks?

3 THE COURT: Two weeks from August 16th would put us
4 at August 30th. And then we'll do one week for a reply, which
5 would put us at that Labor Day Monday, so how about we give
6 you two extra days and say Wednesday, September 8th for a
7 reply?

8 MR. KOTT: Right. And Your Honor -- Your Honor, it's
9 David Kott -- I am not sure on a discovery dispute that a
10 reply is allowed, but I'm not --

11 THE COURT: Yeah, you know, we really -- and this --
12 Mr. Kott, you're right. We're trying to streamline it. We
13 really don't even need a reply here. This isn't -- this is a
14 simple discovery dispute. Those -- that's all we really need
15 here, the moving and the opposition.

16 What else do you have, Mr. Magnanini? Anything else?

17 MR. MAGNANINI: The only thing we actually have, Your
18 Honor, is -- it's not so much a discovery dispute. Let me
19 talk to counsel. It may come up.

20 We have one witness who is in Costa Rica, who is
21 going to cost about \$8,000 to depose and I wanted to discuss
22 cost sharing, but I think -- I'm not sure if the defendants
23 are going to want to share the cost. He's actually their
24 other closing agent, Mr. Anthony Cicalese, who will not come
25 back to America, because there's several pending indictments I

1 think. But that's the only thing I think we have, but let me
2 try and -- we'll resolve it with the defendants.

3 THE COURT: Okay. Then I am not going to address
4 that.

5 Let me hear from defense counsel. I'm going to go
6 down the list that I have. Mr. Kott?

7 MR. KOTT: Yes, just two things.

8 On the witness statements, I just wanted to remind
9 Your Honor, since I know you're conscious of the schedule,
10 that depending on how the Court rules on the witness
11 statements, we may or may not need to take some additional
12 depositions. And what I mean specifically, Your Honor, is, if
13 the Court rules that we're not entitled to use the witness
14 statements, then some of the people who gave witness
15 statements we're going to make -- we're going to need to
16 depose. There's nothing for Your Honor to do on that today, I
17 just wanted you to have a complete record.

18 The second thing is, I -- just so we don't have a
19 discovery dispute down the road. Your Honor has ruled that we
20 cannot get access to the settlement agreement between the
21 plaintiffs and these various defendants. And I don't want to
22 re-litigate that, we lost that. My question, which I am
23 unclear on, is does that mean that we can't ask witnesses at
24 depositions what were the terms of the settlement? And I know
25 we don't pose questions to courts, but I'm trying to move it

1 along for Your Honor.

2 THE COURT: Yeah, I think -- let's just reserve on
3 that, because it depends on how it comes up here and what the
4 objection will be.

5 I don't think it's appropriate right now to address,
6 you know, the preliminary "what if" or "if I ask this, what
7 the response should be." If, during the course of your
8 deposition, that question is posed and there is an objection,
9 you should contact the chambers and let's address the
10 objection at that time.

11 MR. KOTT: Right. And we already proposed that
12 question and there was an objection and instruction not to
13 answer. So, does Your Honor want me to write a letter sending
14 you that portion of the transcript?

15 THE COURT: What was the objection? On what grounds?

16 MR. KOTT: Well, the --

17 THE COURT: What was the --

18 MR. KOTT: Well, as I --

19 THE COURT: The instruction to answer was for what --
20 on what grounds? Because I had not ruled at that time, right?

21 MR. KOTT: Right, you had not ruled on that. And Mr.
22 -- there was -- the question was posed to the Rule 30(b)(6)
23 deponent and Mr. Magnanini told him not to answer. It was
24 also posed to Mr. Manning's client, Mr. Skowrenski, and Mr.
25 Manning indicated he didn't have an objection; however,

1 because the plaintiff was making an objection, he had an
2 objection. It was also posed to one of the other witnesses, a
3 Mr. Cicalese; same thing, Mr. Cicalese's attorney seemed to
4 say he didn't have an objection, but because Mr. Magnanini was
5 making objections, he instructed his client not to answer.

6 THE COURT: All right. Counsel, I --

7 MR. MAGNANINI: And I believe this was because --

8 THE COURT: I think we need to set forth the proper
9 record for that and let's -- let me have a letter on it, okay?

10 MR. KOTT: Okay. We'll do that, Your Honor.

11 THE COURT: Next on the list is Mr. Hayes. Do you
12 have anything else on your list?

13 MR. HAYES: Nothing additional, Judge. Thank you.

14 THE COURT: All right. Mr. McGowan?

15 MR. MCGOWAN: No, sir.

16 THE COURT: Mr. Calanni?

17 MR. CALANNI: Only the -- using discovery on previous
18 testimony and still on date for possibility of asking for
19 dismissal of charges against myself.

20 THE COURT: Well, as I said, Mr. Calanni, you're
21 going to meet and confer with --

22 MR. CALANNI: I understand. I understand. I'm just
23 making them for the record, Your Honor.

24 THE COURT: Okay. Mr. Manning?

25 MR. CALANNI: As you say.

1 MR. MANNING: Nothing further.

2 THE COURT: Okay. Did I miss anyone inadvertently?

3 Okay. So, there are no further issues, counsel. Thank you
4 very much.

5 We are going to do a master rework of the schedule
6 and get something generated electronically within the next day
7 or so. Thank you very much. Have a great day.

8 MR. MAGNANINI: All right. Thank you, Judge.

9 MR. KOTT: Have a good day. Take care.

10 (Conference adjourned at 12:44 p.m.)

11 C E R T I F I C A T I O N

12 I, TERRY L. DeMARCO, court-approved transcriber,
13 certify that the foregoing is a correct transcript from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.

16
17 08/26/10

S / Terry L. DeMarco

18 _____ Date

Terry L. DeMarco, AD/T 566
KLJ Transcription Service

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